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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/535,457	03/24/2000	Fred Christian Baij	29462	2374
23482	7590	03/29/2004	EXAMINER	
WILHELM LAW SERVICE, S.C. 100 W LAWRENCE ST THIRD FLOOR APPLETON, WI 54911			NGUYEN, CHI Q	
		ART UNIT	PAPER NUMBER	3635

DATE MAILED: 03/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/535,457	BAIJ, FRED CHRISTIAN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Chi Q Nguyen	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 07 January 2004.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-11,23-30 and 65-77 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-11,24-30 and 65-77 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 24 March 2000 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

**DETAILED ACTION**

This Office action is in response to the applicant's amendment filed on 1/7/04.

Claims 1, 4, 6, 7, 9-11, 23-30, 65, 70, 71, and 73-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day (US 5,632,095) in view of Leary (US 2,187,087).

Day discloses a lumber product used in standard in the industry for framing comprises a lumber piece known as a stud, which may be a 2x2, 2x3, 2x4, 2x6, 2x8, 2x10, or 12x12 framing stud of varying lengths, a 4x8 or 4x12 laminated framing lumber piece, such as plywood, of varying thickness, and may also be a 4x4 framing lumber piece of varying lengths, marking lines spaced at  $\frac{1}{2}$ " intervals or pre-selected interval, such as 12, 16, and 24 inches or combination thereof, additional visible marking lines are imprinted or stamped on the lumber piece (col. 1, lines 43-55). The lumber product comprises a framed structure 10, such as the wall of a house, with horizontal 12 and vertical 14 framing lumber pieces, commonly known as footer/header and studs, respectively, visible marking lines 22, a 4x8 plywood laminated framing lumber piece 30, is also shown with visible marking lines 24 and 26 imprinted or stamped along all four edges on the face surface 27. It should be noted that the 16-inch and 24-inch increments are the industry standard for spacing framing studs, depending on the climate of the building are (cols. 2-3, figs. 2-3).

Day does not teach expressly the stud locator markings having respective leading edge lines, trailing edge lines and crossing lines between the leading and trailing edge lines. Leary teaches flexible template for stud locator markings having

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leading edge lines, trailing edge lines as shown in fig. 4. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Day with Leary for the stud locator markings having leading, trailing edge lines. The motivation for doing so would have been to provide more accurate control of locations of stud. Day and Leary do not teach specifically crossing lines between the leading and trailing edge lines, examiner takes Official Notice of the functional equivalent of the leading, trailing edge lines being clearly enough for positioning studs and the marking indicators devoid way when the studs being positioned.

Day teaches the structural elements for the stud locator markings as stated except for the at least one strap securing the plurality of elongate pieces of lumber together as the bundle, examiner takes Official Notice the fact that lumber come in bundles wrapping with straps are well known in the lumber art. The motivation for doing so would have been to provide more securement for transportation.

With regard to claims 2, 3, 5, 8, 66-69, and 72, Day and Leary teach the structural element for the stud-locating marker as stated. Day and Leary do not disclose expressly a plurality of stud locator markings spaced along the lengths interval of 8", 16", 24" the variation in spacing between the stud locator markings on a respective the framing lumber product, and between respective ones of the framing lumber products, being consistently no more than 0.13", elongated pieces of lumber, each of the plurality of stud locator markings comprising marking material deposited directly on the respective elongate piece of lumber at surface, including sets of 2x2 stud locator markings, spaced abut 8, and 16 inches, leading edge-to-edge, variations in spacing between stud locator

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markings on a framing lumber product being consistently no more than 0.13 in. leading edge to edge. It would have been obvious to one of ordinary skill in the art at the time the invention was made to mark the studs at the desirable interval (e.g. 8", 16") and adjust the spacing variation between the stud locator markings of the studs being consistently no more than 0.13" are considered as obvious design choice based on desired use.

### ***Response to Arguments***

Applicant's arguments filed 1/12/04 have been fully considered but they are not persuasive. In addressing to the applicant's comments about no motivation in combination of Day and Leary (in attachments A, A2, A3):

As set forth, Day teaches lumber product or studs having a plurality of marking lines (could be in different designs or colors, col. 1, line 56). And Leary teaches tape markings; the marking intervals are corresponding to the lumber thickness (as shown in fig. 2). The examiner agrees with the applicant's arguments that Leary's markings on tape, which can slip, move, and/or break. However, the applicant had misled and misunderstood to the examiner's position, the purposes of making the combination Leary with Day are for wider spacing interval, easy to identify by viewer, every two lines marking are corresponding to the lumber thickness, thus a wood product with only stud spacing marking is provided. Moreover, the spacing lines taught by Day could be wider interval for each of lumber product or stud as taught by Leary.

In regard to the applicant's argument that none of the prior art teach "substantially devoid of any marking indicators away from the stud locator markings". As

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set forth in the Office action that the Day's stud marking lines could be wider for corresponding to the stud thickness as taught by Leary; since the lumber studs being on top of the marking lines thus being devoid it.

Therefore, examiner considers the combination of prior arts and the rejections are properly made and still stand.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (703) 605-1224, Mon-Thu (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be reached at (703) 308-0839. The fax number for the organization where this application or proceeding assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

*CW*  
CQN  
3/9/04



Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600